

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Jason James Vogt,

Petitioner,

-vs-

Chad Pringle, Warden,

Respondent.

Case No. 3:16-cv-65

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Pursuant to 28 U.S.C. § 636, the court has received a Report and Recommendation from the Honorable Alice R. Senechal, United States Magistrate Judge.¹ The Report and Recommendation recommends that Respondent Chad Pringle's motion to dismiss be granted and that Petitioner Jason Vogt's habeas petition be dismissed with prejudice. Vogt timely filed objections to the Report and Recommendation.² In his objections, Vogt repeats one of his main arguments – that is, if trial counsel had properly investigated his case and hired an expert that there is a reasonable probability he would have insisted on a jury trial. He also asserts that the magistrate judge applied the wrong standard to his failure to hire an expert claim. She should have first considered whether trial counsel's failure to investigate known credibility issues of an alleged victim was objectively unreasonable conduct.

The court has considered Vogt's objections, the highly deferential standard of review applied to his action, and the record. After carefully reviewing the magistrate judge's Report and Recommendation, the record, the case law, and Vogt's objections, the court

¹ Doc. #20.

² Doc. #21.

finds the magistrate judge's analysis and recommendations for disposition are appropriate. Vogt has failed to establish he is entitled to relief on his ineffective assistance of counsel or prosecutorial misconduct claims. Further, Vogt's claims that he did not knowingly and intelligently plead guilty are belied by the record and without merit. Accordingly, the court hereby adopts the Report and Recommendation in its entirety.

IT IS HEREBY ORDERED that the respondent's motion to dismiss is **GRANTED**. Vogt's habeas petition is **DISMISSED with prejudice**.

Based upon the entire record, the court finds dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. The court will not issue a certificate of appealability. If Vogt desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with Tiedeman v. Benson.³

The court further finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 7th day of March, 2017.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court

³ 122 F.3d 518, 520-22 (8th Cir. 1997).